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SUMMARY RECORD OF THE 1932nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 10 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Initial periodic report of the Czech Republic (continued) (CCPR/C/CZE/2000/1; CCPR/C/72/L/CZE; HRI/CORE/1/Add.71)

1. At the invitation of the Chairperson, the members of the Czech delegation resumed their places at the Committee table.

2. Mr. AMOR thanked the Czech delegation for its serious-minded and sincere attitude. The initial report (CCPR/C/CZE/2000/1) contained a great deal of information, although the delegation's replies to the questions raised in the list of issues (CCPR/C/72/L/CZE) could perhaps have been more detailed.

3. A number of points were still unclear, however. What was the precise status of the Charter of Fundamental Rights and Freedoms in the domestic legal order? According to paragraph 13 of the report, the Charter had been proclaimed "part of the constitutional order of the Czech Republic", which presumably gave it constitutional force, even though it was not actually part of the Constitution. Following on from that, what was the precise status of the Covenant? Paragraph 13, again, stated that commitments arising from the Covenant were binding on the Czech Republic "even above the framework of what the Charter contains". Did that mean that the Covenant also had constitutional, or even supra-constitutional, force? He would welcome clarification of that point from the delegation.

4. Turning to the subject of implementation by the Czech Republic of the Committee's Views under the Optional Protocol (question 2 of the list of issues), he said that, while there might be some discussion about the best way to implement the Views (legislation, judicial measures, etc.), there was no doubt that they must be implemented. In its Views, the Committee pointed out a State party's failure to abide by its international obligations. The Views were not opinions, or recommendations, but carried a considerable legal weight of their own.

5. The situation of minority groups, particularly the Roma, was clearly a delicate one. He had been surprised to learn that there were apparently no statistics relating to the Roma. The delegation had stated that attitudes were still rigid and that discrimination persisted. It was surely the responsibility of the State to change the negative attitudes of society in order to fulfil its obligations under the Covenant.

6. He would welcome more information about the concept of "citizenship". The Charter referred to "citizens" and "persons living on the territory of the Czech Republic" - what was the difference between the two?

7. Paragraph 235 of the report stated that aliens who were due to be expelled from the Czech Republic could be detained in a police cell for up to 30 days. What guarantees existed to protect them during such a long detention?

8. Paragraph 44 of the report referred to a judgement of the Constitutional Court relating to applications by foreigners for the right of permanent residence in the Czech Republic. He found the paragraph unclear and would welcome an explanation of the cases on which the judgement was based and its precise scope.

9. The CHAIRPERSON, speaking in his personal capacity, asked whether there had been any cases in which domestic legislation had been overruled or repealed because it conflicted with the Covenant. According to article 10 of the Constitution, international human rights treaties, including the Covenant, prevailed over the Constitution. Was the Charter of Fundamental Rights and Freedoms considered part of the Constitution and thus subordinate to the Covenant? What was the exact hierarchy of the law in that area? Were there any laws prohibiting discrimination in the educational, health and prison systems?

10. He was concerned that, according to information in his possession, 75 per cent of Roma children attended "special schools", which were not considered the equivalent of ordinary mainstream schools and did not entitle the children to go on to secondary education. He had been informed that the unemployment rate among Roma was 70 per cent, or even 90 per cent in some areas, compared with an overall rate for the whole country of 5 per cent. What action was the Government taking to improve the situation of the Roma?

11. The Committee was aware of a number of incidents of alleged excesses by police officers. During the IMF/World Bank meeting in Prague in September 2000, people had allegedly been detained even though they had not been involved in violent demonstrations. There had been allegations of beatings and other ill-treatment, humiliating body searches, detention in overcrowded cells without adequate food and water or blankets and refusals to allow detainees to contact relatives or a lawyer. He had details of several other alleged incidents. What was the Government doing to ensure that police officers were made accountable for their actions?

12. Mr. JAŘAB (Czech Republic), replying to members' questions about the situation of minority groups, particularly the Roma, recalled that members had asked for information about what was actually happening in the Czech Republic at grass-roots level, rather than details of legislation. He appreciated the problem, but the situation in the country had been changing very rapidly, particularly because of the new laws introduced in the last three years, so the sociological research needed to evaluate the new situation had not yet been conducted. The next report would contain more details of the actual situation in the country.

13. Members had asked about the use of the term "nationality" in Czech legislation. The Czech term certainly did not mean "citizenship", as the term "nationality" sometimes did in English. In the past, a distinction had been made between "national minorities" - groups such as the Germans or Poles who belonged to a large national group with its own country - and "ethnic minorities" - smaller groups such as the Roma. The new Law on National Minorities used the term "national minorities" to cover both.

14. The Committee had asked about the position of children born to Roma who had had Slovak citizenship at the time of the separation of the Czech Republic and Slovakia in 1993. If the parents had since acquired Czech citizenship, then their children were automatically Czech

citizens as well. Some Roma permanently residing in the Czech Republic, who had become Slovak citizens in 1993 and who had previously been denied Czech citizenship, were now able to obtain it by a simple declaration (see paragraphs 54-59 of the initial report).

15. He had not understood members' questions about article 27 of the Covenant (cultural, religious and language rights of minorities). Everyone in the Czech Republic enjoyed those rights. The Law on Minorities gave special rights to historical minorities who were citizens of the Czech Republic, such as education in the minority language, street names in that language, etc. Non-citizens also had the right to profess their religion, use their own language and enjoy their culture.

16. Members had asked about statistics relating to the ethnic origin of the population. In the census held in March 2001, from which preliminary, unprocessed data were now available, people had had the option of declaring the ethnic identity which they considered themselves to hold. They could also leave that question unanswered, and it appeared that many had done so. A person could declare a mixed ethnic identity, for example a person of German origin could declare himself/herself to be German, Czech or both.

17. A question had been asked about the discrepancy between the number of people who had declared themselves to be from the German ethnic group and the much smaller number who claimed German as their mother tongue. He believed that the parents of many of those people had themselves suffered discrimination after the Second World War because they were of German mother tongue, and had therefore brought their children up to speak Czech. In the current, more tolerant atmosphere, the children felt able to declare their German ethnic origin.

18. The 1991 census had recorded 33,000 Roma in the Czech Republic. The 2001 census had recorded 11,000 people who gave Roma as their primary ethnic group. The data had not yet been fully processed, so it was not possible to say how many people had declared Roma to be their secondary ethnic group. People were also perhaps unwilling to declare themselves to be Roma for fear of discrimination.

19. It was not true, as members appeared to think, that there were no other data indicating the ethnic origin of the population. Any listing of a person's ethnic origin was a very sensitive issue in the Czech Republic, as such lists had been used during the Second World War to select the people who were to be sent to death camps. The idea of listing the ethnic origin of employees in public service, for example, would meet with considerable resistance from the general public. However, there were some indicators of the number of Roma in public service: approximately half of the 80 counsellors who advised district authorities on Roma affairs were themselves from the Roma community, as well as half the members of the Inter-Ministerial Commission for Roma Community Issues (see paragraph 409).

20. There were no quotas for members of Parliament from national minorities: such a policy would require far-reaching changes to the Constitution and was not politically feasible at present. However, there were other forms of affirmative action: for example, some Roma children had learning assistants to help them at school, they received grants to enable them to attend secondary school and there were incentives for Roma to join the police force. Advisers on Roma affairs were employed by a number of ministries.

21. The Government was not happy about the number of Roma children attending the "special schools" referred to in paragraph 372 of the report. However, those schools were not only for Roma children, but for all children who were unable to manage in a mainstream school, whatever the reason. The Czech education system was both egalitarian and committed to excellence: all schools were expected to reach the same high standard, and children who could not achieve that standard, because of a disability or an underprivileged background, were taught in special schools. The learning assistants who worked with Roma children provided a valuable bridge between schools, children and their parents.

22. It was true that the education system was rigid and sometimes excessively demanding. The whole system required reform, not just the special schools. He felt that, at present, the children concerned were better off at special schools, where they had learning assistants and specially trained teachers, until they could be integrated into mainstream schools in a way which would enable them to learn effectively. He would welcome any advice from the Committee about how that could be achieved.

23. Turning to the subject of unemployment among the Roma, he said that welfare benefits in the Czech Republic were relatively high, especially for large families, which many of the Roma had. Many Roma men were, therefore, understandably reluctant to take low-paid jobs which might actually pay less than welfare benefits. The alternatives were to reduce benefits, which the Government did not wish to do, or to increase the minimum wage. The problem was compounded by the many immigrants from countries such as Ukraine and Moldova, who were mostly single men without families to support and were willing to work for lower wages, which reduced the number of unskilled jobs available.

24. No statistics on Roma unemployment were available. The figure of 70 per cent or even 90 per cent mentioned by the Chairperson might be correct in some areas. However, the overall unemployment rate in the country was much higher than the Chairperson had said: it was at least 10 per cent everywhere, and around 20 per cent in the previously heavily-industrialized areas, affecting people with secondary and tertiary education as well as the unskilled.

25. On the question of housing, there was a significant problem of sub-standard housing occupied by Roma. Government policy was to avoid creating ethnic minority ghettos. Tenants' rights were vigorously protected by law, and a court decision was required for eviction from a tenancy. Watering down the law would result in homelessness. It was a lesser evil to provide sub-standard housing for those who failed to pay rent over a long period. The municipal and local authorities had to grapple with the problem of enabling those in sub-standard housing to move to better accommodation.

26. Forced assimilation of the Roma was not the Government's preferred solution, although the community at large would prefer that. The Government was in fact defying public opinion and popular anti-Roma prejudice by developing integration policies, and none of the major political parties had resorted to anti-Roma rhetoric. In that respect, the Czech Republic stood alone among countries with Roma communities.

27. Concerning the political representation of the Roma, contact was maintained with Roma non-governmental organizations (NGOs), and their leaders were represented in an individual

capacity on the Inter-Ministerial Commission for Roma Community Issues. The leadership of the International Romani Union was predominantly Czech, and the Minister for Foreign Affairs had endorsed its project to define the Roma as a European nationality. Dialogue with the community at large was maintained by the Government through public awareness campaigns, including the "tolerance project", involving courses for teachers and students by mixed Czech and Roma teams and media work. The project, now to be followed by a second, had received 10 million koruny from public funds. The Government was committed to the promotion of dialogue and to eliminating the stereotypical negative image of the Roma. Apart from a very small number from the Balkans, the Roma were by no means foreigners to the country; they were Czech or former Slovak citizens resident on the territory for one or two generations. Nor were they travellers, unlike the western European Roma.

28. On the question of "less serious" bullying as a military offence, mentioned in paragraph 134 of the report, it should be obvious that more serious bullying was treated as a criminal offence. The immunity of members of parliament, mentioned in paragraph 119 of the report, meant that in theory such persons would be beyond the reach of the law if they ordered ill-treatment, although no claims had ever been raised on that score. It might be necessary in future to persuade them that the extent of their immunity should be reduced, and to legislate to that effect.

29. Mr. SOVÁK (Czech Republic) explained why individuals had to seek remedies for violations of their rights through the Constitutional Court or the European Court of Human Rights. The court system comprised over 80 district courts, 8 regional courts and 2 higher courts, in Prague and Olmutz. The Supreme Court sat in Brno. The Constitutional Court was outside that system. Its function was to deal with questions arising under constitutional law. Decisions could be appealed from district or regional level to the highest level. In civil cases, the initiative lay with the individual, but appeals in criminal cases could be made only through the Ministry of Justice. Under a new procedure, it was now possible to lodge appeals in either civil or criminal proceedings with the Supreme Court. The Constitutional Court applied the highest legal norms within the domestic legal system, and its decisions were binding on all the other courts. A new Charter of Fundamental Rights and Freedoms based on the Constitution had been adopted by Parliament. The norms in the Constitution and the Charter were superior to those derived from the Criminal Code, the Code of Criminal Procedure, the Civil Code and the Family Code. According to article 10 of the Constitution, which rendered international human rights instruments ratified by the Republic immediately binding and superior to domestic law, the Covenant (ICCPR) occupied a privileged position in the domestic legal order. Most of its provisions had been incorporated in domestic law through specific legislation. There had been some heated discussion about the scope for conflict between the Covenant and the new Charter, and there was no mechanism for resolving any such conflict. Czech law might in some cases afford wider protection for fundamental human rights than did the Covenant. In his own view, there was no doubt that the Covenant carried greater legal force than the Constitution of the Republic, but the question remained in abeyance pending codification.

30. Mr. BUREŠ (Czech Republic) responded to the questions about sexual abuse, trafficking in women and violence against women. Combating sexual abuse of children was a high priority for the Government. Such abuse was a criminal offence carrying a penalty of up to eight years' imprisonment. The various kinds of sexual abuse were covered by paragraphs 215, 217, 242

and 243 of the Criminal Code. Naturally, the criminal law provisions could only be applied where cases of sexual abuse were reported and the necessary evidence collected. Over the past few years, child abuse of all kinds had been carefully monitored under a pilot project whereby district offices, the police and social workers collated all incidents of mistreatment or sexual abuse of children. There had been much discussion of how to make a monitoring system work while avoiding misuse of personal data. Another approach to the problem was to offer support to NGOs, which had the flexibility to deal with highly sensitive issues. Child "hotlines" and children's counsellors were able to collect information from their clients, provide the assistance required and then contact the public authorities. Much of their funding came from government subsidies.

31. In very serious situations, it might be necessary to provide shelters, for instance to house mothers of children on a temporary basis. The construction of such shelters was publicly funded as part of the crime prevention programme. Public information campaigns on the question of child abuse were directed at the general public, teachers and citizens' organizations, urging them to contact NGOs or the appropriate authorities if they noticed any signs of sexual abuse in children. Four years previously, the Ministry of the Interior had established a special juvenile crime unit, and each district had specialist criminal police to investigate juvenile cases. New methods of investigating sexual abuse, such as techniques involving dolls, were in use. An attempt was being made to provide special premises to investigate crimes against children or rape cases, thus providing a more agreeable environment than police stations and avoiding secondary victimization or humiliation of the victims.

32. Turning to the question of sexual exploitation of children, trafficking, and child prostitution, he explained that there had been only one reported case of child trafficking in the past 10 years. Child prostitution and child pornography were somewhat more common. A national action plan adopted by the Government in July 2000 comprised both legislative and practical measures to deal with the problem.

33. Statistics were not readily available except in criminal cases, such as rape and murder, and there was no reliable information about victims. An attempt was now being made to obtain details of the victims, including victims of domestic violence. The process of giving testimony in cases of rape and sexual abuse was often very painful for the victim, and the authorities were now endeavouring to conduct a single interviewing procedure so that the victim need not repeat the testimony. However, not all the courts were satisfied with that approach.

34. It was impossible to know how the Czech Republic compared with other countries in regard to the frequency of abuse cases. Not all the problems reported on child "hotlines" or otherwise involved actual criminal offences. The Republic was endeavouring to cooperate with its neighbours in improving information gathering.

35. Domestic violence had been a somewhat neglected topic in the early 1990s, but no longer; the Government was fully aware of the seriousness and scale of the problem. The police were given special training in dealing with victims. Until recently, there had been no reliable data on domestic violence, but research done by the NGO "White Circle of Safety" indicated the

gravity of the problem. The offences concerned were fully covered in the Criminal Code; however, it was difficult to persuade women to testify against their husbands, and that difficulty had to be overcome.

36. Trafficking in women had been unheard of until the Czech borders had been opened 10 years previously. Because of the Republic's geographical situation, it was a target country for traffic from the East or from the Balkans, and a transit country for traffic to the West. Girls were also trafficked out of the country to Western Europe, for example to the Netherlands and France. Trafficking in women was fully covered in the Criminal Code. It was punishable by up to five years' imprisonment, or up to eight years if practised in the framework of organized crime, as was usually the case. However, it was very difficult to get evidence from the victims, because the offence was rarely reported and much of the organized crime was perpetrated by groups from the former Soviet Union. The Czech Republic was establishing a special unit, as part of the organized crime squad, to tackle the problem of trafficking in both women and children. The unit would consist of highly qualified specialists wholly unconnected to the local police, to avoid the possibility of corruption. A key task was to set up a system of asylum for victims and witnesses, and a project for that purpose was under way, with the support of the United Nations Office for Drug Control and Crime Prevention in Vienna , and in cooperation with Poland, Germany, the Netherlands, Austria and Finland. It was hoped that the project, which was to run over a period of 19 months, would result in a draft model scheme of protection which would help non-governmental organizations in the various European countries to tackle the problem.

37. Statistics could not always be relied upon to give an accurate reflection of the scale of trafficking in women. Official figures showed 35 reported cases in 1996, 30 in 1997, 34 in 1998, 23 in 1999 and 13 in 2000, although many more cases remained undetected. It was also impossible to tell from the figures how many people were involved in trafficking activities, since most offenders acted as part of criminal networks. His Government was particularly concerned about the trafficking of foreign women into the Czech Republic. Experience showed that most of the women involved entered the country legally, with offers of work in bars, and that the process of coercion began thereafter. The aforementioned project was designed to provide accommodation and security to women who acted as witnesses in such cases. Since many trafficking activities took place near the German border, the increasing cooperation between the Czech and German police forces was particularly important in efforts to combat the phenomenon.

38. Ms. PASTRŇÁKOVÁ (Czech Republic), replying to a question concerning discrimination against women in the workplace, said that amendments to the new Code of Civil Procedure meant that the burden of proof had been shifted from the plaintiff to the defendant in labour cases before the civil courts.

39. Mr. BUREŠ (Czech Republic), referring to questions about the police, said that after the collapse of communism in 1990, it had been naively believed that a specialist police force would no longer be needed to maintain public order. In fact, there had been a number of public demonstrations resulting in massive violations of public order, particularly in the course of the past three years. They had involved extremist groups ranging from anti-globalization

campaigners, such as the Global Street Party, to skinheads, and had led to the destruction of shops, fast-food restaurants, banks and cars. The police were still learning to cope with such incidents.

40. Almost all the complaints against the police referred to in the report or raised by the Committee were connected with incidents of that kind. In such situations, it was very difficult for the police to gauge how much force should be used to restore order. Shortly after the meeting of the IMF and World Bank in Prague, he had been asked to respond to questions from the public on a radio programme concerning the handling of the riots by the police. He had been surprised to learn that most callers were more worried that too little force had been employed than they were about complaints of police brutality. In their training, police officers were instructed to use only as much force as was absolutely necessary in order to make an arrest. Although there were isolated cases in which excessive force had been used, he did not agree that it constituted a general pattern, nor that such incidents could be described as torture. In one particular case, disciplinary action had been taken against a police commander who had seriously misjudged the need for force in a drugs raid on a nightclub.

41. With regard to the recent anti-globalization demonstrations in Prague, the police had been shocked by the level of violence employed by the rioters. A total of 257 complaints, concerning 70 separate incidents, had been laid against the police for their handling of the riots. Fifty-four of those incidents had involved minor irregularities such as a shortage of food or blankets in cells or mistakes in the paperwork connected with an arrest, while 16 had been related to alleged criminal offences by police officers. Three of the complaints concerning minor cases had been found to be justified: one police officer had refused to show identification, another had taken a citizen's fingerprints without justification, and another had unlawfully escorted a citizen through a police line. Disciplinary measures had been taken against the officers concerned. No evidence had been found in 12 of the 16 cases involving alleged criminal offences, while 3 offences had been proved but the offender had either not been found or had been released because of insufficient evidence linking him to the crime. The remaining case had been found to relate to a minor offence, and disciplinary measures had been taken. The results of the investigations were unsatisfactory in so far as not enough evidence had been found to convict any of the officers accused of criminal offences. An important lesson for the future was that the police should be better prepared to handle all aspects of riot control. Any complainant unsatisfied with the conduct of an investigation could ask a prosecutor to supervise, and in all cases there was a right of appeal. The Ministry of the Interior was currently considering ways of improving the complaints procedure, including means of increasing citizens' involvement.

42. Mr. JAŘAB (Czech Republic), replying to a question concerning a particular case of alleged police brutality against one Stanislav Penc, said that there had been no connection with Mr. Penc's human rights activities. The situation had arisen in a bar when Mr. Penc, a known eccentric, had challenged a police officer's authority. Both of the individuals involved had been guilty of unruly behaviour, but the incident could not accurately be described as the beating of a human rights activist.

43. Ms. MEDINA QUIROGA said she would be interested to learn how the decision was taken whether or not to send a child to a special school. She understood from note 54 of the report that children could be sent to special schools simply because they were from Roma

communities. Such decisions must be taken on the basis of a child's individual needs, and certainly not on the basis of ethnic origin. She also asked whether the special schools operated as a preparatory stage for the mainstream school system. If children were destined never to leave special schools once they had been enrolled, the cycle of marginalization would be perpetuated.

44. She requested confirmation that the situation described in paragraph 134 of the report was merely a hypothesis and, assuming that to be the case, stressed the importance of tackling the problem of undiscovered bullying. The Spanish translation said exactly the opposite of the English text, and that was the reason for her request for clarification. She understood that municipalities received financial assistance to run shelters to protect the victims of serious cases of sexual abuse. Precisely how many shelters were there and did they also protect the victims of domestic violence? She welcomed the efforts being made by the Government to reduce the complexity of the procedure for bringing complaints of domestic violence to court. However, she would appreciate further details of what changes, if any, had been made to the Code of Criminal Procedure in that regard. Furthermore, if domestic violence was "fully covered" by the provisions of the Code, could the delegation explain what measures were in place to stop the perpetrators of domestic violence returning to the family home after their conviction?

45. Sir Nigel RODLEY, while acknowledging that the human rights community had on the whole approved of the police handling of the Prague riots, said that he would nevertheless welcome further information about incidents in police stations in particular. He was especially concerned by suggestions that the law of criminal defamation had been used as a weapon to deter complaints of ill-treatment by the police.

46. Mr. LALLAH said that although he appreciated the explanations given by Mr. Sovák of the Supreme Court, he would welcome more concrete information on the extent to which the Covenant was applied in practice. Article 90 of the Constitution stipulated that the role of the courts was above all to provide protection of rights in the manner determined by law. That was extremely vague. Could the delegation explain how well acquainted judges were with the provisions of the Covenant, and whether it had been invoked before the courts? Although it was unreasonable to expect every individual to know his or her rights as they were set out in the Covenant, it was important that they could take legal action relatively easily, and that they were entitled to legal counsel.

47. Mr. SCHEININ said that the delegation had not fully responded to his question concerning stateless Roma children. Were the authorities making efforts to ensure that all children born in the Czech Republic obtained citizenship? There was a danger that many children would remain stateless if it was left entirely to the parents to apply for citizenship. With regard to the promotion of the participation of minorities in public life, it should be stressed that there was a range of options relating to affirmative action, besides the establishment of quotas in Parliament.

48. Mr. YALDEN said that his earlier questions remained unanswered. Given the broad terms of the Charter of Fundamental Rights and Freedoms, were there any specific legal provisions against discrimination with regard to age and disability? There seemed to be a gap in the distribution of responsibilities between the Ombudsman and the Commissioner for Human Rights. Paragraph 393 of the report contained a reference to "the restriction of rights and

freedoms of members of a certain nation or race", and it was stated that the restriction of rights and freedoms alone, in sectors such as employment, was not punishable by law. Had there been any instances of such discrimination in the private sector in particular?

49. He agreed with Mr. Scheinin that there were many alternative means of affirmative action other than quotas in Parliament. He reiterated that it would be impossible to evaluate efforts to improve the situation of minorities if reliable statistics were not made available. Paragraph 97 of the report indicated that statistics were compiled for women, so he saw no reason why that could not also be done for minorities and for disabled persons.

50. Mr. ANDO repeated his request for information concerning the compatibility of domestic law with article 4.

51. Mr. HENKIN said that the Genocide Convention referred not only to killings but also, for example, to deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part. Such considerations were relevant to the problem of the Roma, and he would appreciate any comments the delegation might have on that issue. With regard to the incident involving Mr. Stanislav Penc, he was surprised that a major NGO had express a view very different to that put forward by the Government. He suggested that improved cooperation between NGOs and the Government could have avoided such conflicting accounts.

52. The CHAIRPERSON reminded the delegation of two questions that he had raised at the previous meeting. Had a law ever been declared unconstitutional on the ground of incompatibility with a provision of the Covenant and were there any legal regulations sanctioning discrimination in education, health care, prisons and other spheres of life?

53. Mr. JARAB (Czech Republic) said that Roma children were not sent to special schools because of their ethnic status but because of poor performance in tests for admission to regular schools or failure to keep pace with other pupils at a later stage. To ensure that the tests themselves were not at fault, the Ministry of Education had taken great pains to remove any cultural bias that might discriminate against children from different cultural backgrounds. Until recently, however, special schools had admittedly been a "one-way street". The law had therefore been amended in 2000 to facilitate the transition from special schools to mainstream secondary schools, and provision had been made in recent years for remedial courses. Some Roma children had successfully made that transition. Unfortunately, they were still the exception rather than the rule, but the long-term aim of the educational authorities was to promote integration.

54. The Government had drafted a proposal to include a provision regarding persons with disabilities in the Charter of Fundamental Rights and Freedoms and affirmative measures had been introduced on their behalf. There was as yet no plan to address the issue of ageism, perhaps owing to a lack of awareness of its existence as a form of discrimination. It might be covered, however, by the reference to "other status" in article 3 of the Charter.

55. It was difficult to obtain objective data regarding ethnic minorities. Only a small proportion of the persons considered by the majority population to be Roma had identified

themselves as such in the census, and the authorities were reluctant to attribute an ethnic identity to a person in the absence of self-identification, especially since the Charter protected the individual's freedom to choose an identity. Even study grants reserved for Roma were awarded solely on the basis of self-identification. The Inter-Ministerial Commission for Roma Community Issues preferred the term "Roma communities" to "the Roma minority".

56. Minorities were represented on two advisory bodies, the Inter-Ministerial Commission and the Council for Nationalities, which reported to the Executive. He was unsure whether their activities qualified as affirmative action; enhancement of representation was probably a better description. The introduction of a system of directly elected parliamentary representatives of minorities would prove highly controversial when it came to identifying the eligible electorate.

57. With regard to discrimination in the private sector, the Czech Trade Inspection Office was authorized to sanction discrimination in the tertiary sector of the economy. However, the Government was keenly aware of the need for new anti-discrimination legislation. Such legislation had already been enacted in some cases (e.g. the amendment to the Misdemeanours Act) and drafted in others (e.g. the amendment to the Code of Civil Procedure shifting the burden of proof to the defendant). New legislation would probably also be enacted to give effect to European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective or racial or ethnic origin, and in response to the review of legislation, primarily the Trade Inspection Act and the Employment Act, to be completed by late December 2001. In the case of education, health care and the prison system, discrimination was largely an academic issue because no complaints had ever been filed. Health care was based on public health insurance which covered all citizens and permanent foreign residents.

58. The authorities were considering the possibility of setting up a body to provide legal assistance to victims of discrimination along the lines of the Commission on Racial Equality in the United Kingdom. A decision was expected in late 2001 or early 2002.

59. He was a close friend of Stanislav Penc and had protested about his somewhat insensitive treatment by the police. They had been members of the same NGO for years and Mr. Penc was a highly esteemed member of the Council for Human Rights, within which a forum had been established for the free exchange of ideas - some quite radical - among human rights defenders, NGOs and deputy ministers. The incident referred to by the Committee should be placed in perspective: there had been some wrongdoing on the part of the police but not on the scale alleged.

60. He was unaware of the existence of stateless children of Slovak Roma resident in the Czech Republic. Such cases might arise where the parents had failed to acquire Czech citizenship but he was certain that their number was very small.

61. Mr. BUREŠ (Czech Republic) said that the Minister of the Interior had adopted measures to prevent statelessness, in particular a ministerial decree instructing district officials to provide the requisite information and guidance to the Roma concerned. An NGO called the Citizenship Counselling Office also offered assistance to people who wished to obtain citizenship.

62. The local authorities had set up a number of hostels or refuges, which differed in terms of their admission procedures. Women with children who were victims of domestic violence were given priority and there was a shortage of places for single women. Efforts were being made to address the problem. The new Code of Criminal Procedure was the product of a political consensus and might perhaps be found wanting in some respects. For example, a woman who was a victim of domestic violence had to consent to criminal charges being brought against her husband. However, it contained sound provisions regarding protection orders. Judges required further training to ensure that the Code was effectively implemented.

63. Reprisals against a person who lodged a complaint against a police officer were theoretically proscribed but the opposite might admittedly appear to be the case in certain circumstances, for example where an officer used excessive force on catching an offender in the act and exaggerated the scale of the offence by way of self-justification. But such cases were very rare. Complaints about deprivation of food or contact with relatives in police custody were highly unlikely to lead to reprisals. People in general were not afraid to complain about police conduct.

64. Mr. SOVÁK (Czech Republic) said that the new draft Criminal Code included a provision for the protection of women against domestic violence; under the existing Code, such cases were dealt with under the ordinary provisions relating to bodily harm.

65. Pursuant to article 90 of the Constitution, the courts were required to protect rights and to rule on the guilt or innocence of alleged offenders in criminal cases. But the Covenant took precedence over article 90 and there could be no question of any conflict between the two. Article 10 stated that international human rights treaties ratified by the Czech Republic were directly binding and took precedence over domestic law. Where a court decision was found to be incompatible with the Covenant, a complaint could be filed with the Constitutional Court. However, he admitted the need for training courses to ensure that all judges, prosecutors and police officers were aware of the status of the Covenant.

66. The CHAIRPERSON invited the delegation to reply to questions 15 to 19 of the list of issues, relating to discrimination against aliens; overcrowding in detention facilities; external monitoring of prisons and other similar institutions; allegations of lengthy pre-trial detention; and undue delays in judicial proceedings.

67. Mr. SOVÁK (Czech Republic) said that his comment regarding the need for training courses was also of pertinence to question 15 (a). Certain State attorneys and judges might not always have complied with the letter of the law when placing aliens in custody.

68. Mr. BUREŠ (Czech Republic), replying to question 15 (b), said that the new Aliens Act provided full protection for aliens during the administrative process of expulsion. Decisions were not taken by individual police officers and initial decisions could be appealed to the courts. Conditions in detention cells had been a major problem in the mid-1990s when the country had faced an influx of large numbers of illegal immigrants. New facilities were now being built and in 1998 a new provision concerning detention cells for persons awaiting expulsion had been

added to the Ministerial Decree on conditions in police cells. It prescribed specific administrative procedures and laid down detailed requirements in respect of technical equipment, health care and sanitary conditions.

69. Mr. SOVÁK (Czech Republic), replying to questions 16, 18 and 19, said that the new Code of Criminal Procedure introduced alternatives not only to custodial sentences but also to criminal proceedings. A large proportion of the offences addressed in criminal proceedings presented little material danger to society. Only a few years previously, the Czech Republic had been notorious for the size of its prison population. Under the new Code of Criminal Procedure, the numbers had been greatly reduced. A different approach was adopted by the police and public prosecutors in criminal investigations and the provisions for hearing witnesses had been amended. Special importance was attached to alternatives to custodial sentences in the case of young offenders. The draft Criminal Code contained a new classification of offences, reflecting changes in terms of the perceived danger to society. New institutions had been created to support the Constitutional Court. A major improvement in the overall situation was expected as from January 2002.

70. Mr. JAŘAB (Czech Republic), replying to question 17, said that the Council for Human Rights had appointed him Human Rights Commissioner for negotiations with the various ministries about the creation of a body with responsibility for external monitoring of prisons and other institutions where persons were detained against their will. The idea of expanding the duties of the Ombudsman's Office was flawed since it was, by definition, a reactive institution rather than one engaged in systematic monitoring, and it was in any case already inundated with work. The idea of assigning such responsibilities to the Department of the State Prosecutor had also been mooted. In legal circles and among human rights defenders, it was felt that the abolition of the Department's role as a general watchdog in the early 1990s had not been entirely warranted since it had played an effective part in ensuring that the law was not being breached in detention facilities. That was a contentious issue and negotiations would be conducted between the Human Rights Commissioner and the Department of the State Prosecutor on the subject. In addition to overseeing compliance with the law, whatever body was established should also monitor respect for less tangible aspects of human dignity and examine existing legislation and regulations to assess the need for amendment. That kind of task would not normally be entrusted to the Department of the State Prosecutor but would require greater input by civil society. He hoped that the situation would be clarified over the next 12 months.

The meeting rose at 6.05 p.m.